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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,411	07/29/2003	Peter K. Olmsted	31530-UT	7242

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PEACOCK MYERS AND ADAMS P C
P O BOX 26927
ALBUQUERQUE, NM 871256927

EXAMINER

SHAH, KAMINI S

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/629,411	Applicant(s) OLMSTED, PETER K.	
	Examiner Kamini S. Shah	Art Unit 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 8,9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Response to Arguments

1. Applicant's arguments filed 02/07/05 have been fully considered but they are not persuasive. However, as applicant suggest that 35 U.S.C. 102(a) applies to the PCT publication date in the present application claiming priority to provisional application. Accordingly, 35 U.S.C. 102(e) statutory bar has been changed to 102(a) for rejection of claims 1-7 and 10-13.

2. The Declaration of Peter K. Olmsted filed on February 07, 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the PCT/EP01/08841 reference.

3. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the February 07 2002 the publication date of reference PCT/EP01/08841, for the following reasons:

Attached Exhibit A, the copy of facsimile is hard to read for containing small fonts.

The location of support for elements of claims 1 and 7 does not correspond to the page numbering of Exhibit A or B. Additionally, the mathematical formula/theory disclosed in Exhibit A as an evidence of claimed invention, is insufficient for corresponding each and every element of the independent claims 1 and 7. There is no evidence shown for dependent claims 2-6, and for independent claim 13 for claiming Computer software product.

Also, page 2 of 4 of Exhibit A is missing.

4. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of February 7, 2002 the publication date and July 31, 2001 the international filling date for reference to PCT/EP01/08841. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

For at least these reasons, the evidence submitted is insufficient to establish a conception of the invention prior to the effective date of July 31, 2001 reference to PCT/EP01/2001.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-7 and 10-13 are rejected under 35 U.S.C. 102(a) as being anticipated by Kasper et al 2003/0174305.

Regarding to claimed invention claims, Kasper et al suggest measuring device for measuring and staking out of building ground plans for new building i.e. preparation of batter board and as well as area calculation for surveying of existing buildings or for

examination of individual measurements of a building on col. 4, paragraph [0074]. With regarding claimed step of providing at least two batter points away from boundary of the building, Kasper discloses a marker transmitter that triggers certain positions and sets marking when reaching said positions in order to transfer CAD floor plan. In figure 9b actual position of the mobile robot is calculated using triangulating position of the three signal beam detectors arranged parallel and with the distances d_1 and d_2 in one plane and base distances b_1 and b_2 for the determination of the distance r calculated from α_1 and α_2 and the base distances, see paragraph [0090]. With regard to claimed building element data, Kasper et al discloses measuring device as shown in figure 10a, with a two-dimensional positioning with only one signal beam, signal receiver 3d, equipped with three rod sensors located parallel to the rotation axis, see paragraph [0088] and in paragraph [0089] and [0090] discloses the method for calculating distance.

Allowable Subject Matter

6. Claims 8 and 9 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The cited art does not teach claimed invention as specifically recited as first, second, and third building element at required relative angle.

Conclusion

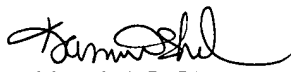
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamini S. Shah whose telephone number is 571-272-2279. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey can be reached on 571-272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kamini S Shah
Primary Examiner
Art Unit 2142

KSS